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Protracted conflicts in the GUAM area and their implications for international peace, security and development

Status of internally displaced persons and refugees from Abkhazia, Georgia

Report of the Secretary-General

I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 62/249, entitled "Status of internally displaced persons and refugees from Abkhazia, Georgia", in which the Assembly requested the Secretary-General to submit to it at its sixty-third session a comprehensive report on the implementation of the resolution. The report, which covers the period from 16 May 2008 to 15 July 2009, draws on information received from a number of United Nations entities.

2. In accordance with the provisions of the resolution, the report focuses on (a) the right of return of all refugees and internally displaced persons and their descendants, regardless of ethnicity; (b) the importance of preserving the property rights of refugees and internally displaced persons, including victims of reported "ethnic cleansing"; and (c) the development of a timetable to ensure the prompt voluntary return of all refugees and internally displaced persons to their homes.

II. Background

3. Following the escalation of conflict in 1992, which had caused significant displacement of civilians, in particular from the predominately Georgian-populated Gali district, armed hostilities between the Georgian and Abkhaz sides ended with the signing of the Agreement on a Ceasefire and Separation of Forces in Moscow on 14 May 1994 (S/1994/583 and Corr.1, annex I). This agreement was preceded by the signing on 4 April 1994 of the Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons by the two parties, the Russian Federation and the United Nations High Commissioner for Refugees. The parties agreed to cooperate and to interact in planning and conducting the activities to guarantee the safe, secure

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and dignified return of people having fled from areas in the conflict zone back to the areas of their previous permanent residence.

4. In a report submitted to the Security Council on 3 October 2008, the Secretary-General noted that the outbreak of hostilities in South Ossetia on 7 and 8 August 2008 had profoundly impacted the situation in the Georgian-Abkhaz conflict zone and the overall conflict settlement process (S/2008/631). The August 2008 conflict had led to the displacement of several hundred persons from the upper Kodori Valley, but did not result in significant renewed displacement from other areas on the Abkhaz-controlled side.

III. Right of return

5. Statistics provided by the Ministry for Refugees and Accommodation of Georgia indicate that more than 293,048 internally displaced persons currently reside in Georgia, of whom 245,363 (83.7 per cent) were persons displaced following the Georgian-Abkhaz conflict in the 1990s. Of the latter number, it is estimated that approximately 45,000 people may have spontaneously returned or are in the process of returning to their homes in the Gali district, although they are still considered internally displaced persons in Georgia and are eligible for Government assistance. Their reintegration process has, however, not been concluded, as many of these people frequently travel to and from their homes, especially during the planting and harvest seasons. For several years, the United Nations High Commissioner for Refugees has called upon the parties to conduct a verification and profiling exercise as a first step to better assess the continued protection and assistance needs of spontaneous returnees and their host communities. Unfortunately, this exercise has not yet taken place, owing to the lack of agreement between the parties.

6. Since late 2005, the competent United Nations entities and non-governmental partners have been implementing the Strategic Directions for the return of internally displaced persons, developed by the Office of the United Nations High Commissioner for Refugees in consultation with all stakeholders and explicitly referred to in Security Council resolution 1781 (2007). This strategic framework, formulated by the United Nations entities in Georgia in partnership with other international actors, including international non-governmental organizations, as well as the parties concerned, aims to contribute to bottom-up peace building through targeted assistance based on self-reliance and community involvement. It integrates protection and assistance efforts through returnee monitoring and targeted assistance projects and by addressing returnee concerns in discussions with the authorities.

7. Humanitarian assistance is provided in both returnee and non-returnee areas to contribute to confidence-building among communities, and includes measures to increase the capacity of civil society actors to respond to the humanitarian needs of the beneficiary population. Assistance and protection activities are provided on the understanding that the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex) are observed by all authorities, groups and persons irrespective of their legal status and are applied without any adverse distinction (principle 2.1), including the principles relating to return. Many returnees seasonally migrate, or they have their families living in different places. Returnees are concerned in particular with their security and access to livelihood programmes.

Other protection issues deserving attention include personal identity documentation, freedom of movement and secure access to effective social and public health-care services.

8. The principles and factors set out below guide the implementation of the return of internally displaced persons.

9. Concrete results in conflict resolution would provide a solid foundation for the return of refugees and internally displaced persons, while economic development would support sustainable returns and livelihood improvement for the broader war-affected community. A peace agreement should thus ideally be secured prior to the United Nations entities supporting an organized process of return. In the absence of a political settlement, however, adequate security guarantees must be put in place for returnees and concrete measures taken by the parties in this regard, to be verified through monitoring by international organizations. In this respect, the parties are urged — as reflected in various Security Council resolutions, including resolutions 1752 (2007), 1781 (2007) and 1808 (2008) — to finalize without further delay a document on the return of refugees and internally displaced persons.

10. Efforts by the Government of Georgia to improve the living conditions of internally displaced persons, inter alia through facilitating integration of those persons in their present locations on the basis of the 2007 national strategy for internally displaced persons and the 2009 action plan for internally displaced persons, are well recognized and will ultimately contribute to a durable solution for the remaining internally displaced persons in Georgia. These activities, however, will not in any way limit or undermine the right of return of the persons concerned.

11. Despite the absence of any breakthrough in the peace negotiations, to date some 45,000 internally displaced persons and refugees have returned spontaneously, mainly to the districts of Gali, Ochamchira and Tkvarcheli. It is essential for the security and well-being of these people that they not be neglected. The implementation of a return verification and returnee profiling exercise would allow targeted assistance to be provided to the returnees and the receiving communities in order to address the actual needs and risks faced by this population, as well as the needs and concerns of internally displaced persons wishing to return spontaneously.

12. It is essential to recognize return both as a human right and as a humanitarian issue that must be addressed irrespective of any solution to the underlying conflict. It is thus not acceptable to link returns with questions of political status, and it has been reiterated on numerous occasions that return is strictly a humanitarian issue that requires full support by the parties in order to achieve the desired results.

13. International law and standards relating to internally displaced persons globally as well as commitments made by the parties in this particular context (such as those contained in the Quadripartite Agreement) underscore that responsibility for internally displaced persons and refugees rests first and foremost with the parties to the conflict. The competent United Nations entities are mandated to contribute to supporting these efforts, but responsibility for the actual creation and maintenance of the requisite conditions (security, economic, integration etc.) for sustainable returns rests with the parties themselves.

14. Confidence-building, as a means of conflict transformation, has many dimensions and covers a range of measures. In the current context, confidence-building is required at all levels, not only between the parties but also between the

local population in the receiving communities and returnees and between the population at large and internally displaced persons. A network of trust needs to be developed as part of peacebuilding initiatives, in the hope of ushering in a transition from continued conflict prevention to conflict transformation and eventual conflict resolution.

15. The contribution of the Office of the United Nations High Commissioner for Refugees within the overall United Nations confidence-building effort is set out in the Strategic Directions of the Office for the return of internally displaced persons. The aim of this strategy is to build trust and confidence between communities at the grass-roots level. Supporting track 2 peacebuilding initiatives while formal track 1 peace negotiations continue is important for the security and well-being of internally displaced persons who have returned spontaneously. Moreover, such an approach may be able to enhance confidence-building at higher levels, for instance by assisting peacebuilding from the bottom up. Grass-roots activities have yielded encouraging results in bringing communities together to undertake projects jointly, and the United Nations entities in Georgia stand ready to support further initiatives in this regard.

16. In its resolutions 1752 (2007) and 1781 (2007), the Security Council called on both parties to implement the Strategic Directions to facilitate the return of displaced people, in the first instance to the Gali region. The Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, has reinforced this message, noting that implementation of the Strategic Directions should be the first concrete step in the direction of return.[1]

17. The spontaneous return verification and profiling exercise in the Gali district — as envisaged in the Strategic Directions, as initially agreed upon by both parties and as repeatedly recommended by the Security Council in its resolutions 1752 (2007), 1781 (2007) and 1808 (2008) — remains critically important to obtaining a clearer picture of the legal, social, economic and security conditions in areas of return as well as of the number, profile, particular vulnerabilities and needs of returnees and the receiving communities. The results will enable better targeted, more effective interventions as well as informed planning for further returns. The verification and profiling of the returnee population will also clarify the magnitude of seasonal movements and the factors influencing seasonal or temporary returns.

IV. Property rights of refugees and internally displaced persons

18. In order to preserve and protect the property rights of refugees, internally displaced persons and their descendants and to move towards their full enjoyment of these rights and the implementation of restitution or compensation, the parties must resolve the complex legal and political issues impeding their implementation. In doing so, the principles on housing and property restitution for refugees and displaced persons (the "Pinheiro principles") and international law, including human rights law, have to be fully respected. Implementation of property restitution should be guided by the handbook entitled *Housing and Property Restitution for Refugees*

[1] Statement to the Panel on the Legal Aspects of Return of Internally Displaced Persons and Refugees to Abkhazia, Georgia, convened at United Nations Headquarters on 29 November 2007.

and Displaced Person: Implementing the "Pinheiro Principles",[2] which has been developed to assist States and other stakeholders in the implementation of the principles with more elaborate operational guidance.

19. The United Nations and the specialized agencies stand ready to assist the parties in addressing, as a first step, the following issues:

(a) Establishment, registration and documentation of property rights;

(b) Preservation of property rights;

(c) Permitting safeguarded property transactions;

(d) Establishment of property restitution procedures.

V. Timetable for the voluntary return of all refugees and internally displaced persons

20. No timetable for the voluntary return of all refugees and internally displaced persons has yet been developed given the prevailing environment and continued discussions between the parties. However, the United Nations entities stand ready to proceed, in consultation and cooperation with the parties concerned, with the development of a timetable that would include the following:

(a) Assessment of the anticipated areas of return in terms of safety, infrastructure and livelihood prospects;

(b) An information campaign for refugees and internally displaced persons on the available options for durable solutions (return, integration and resettlement);

(c) Identification of refugees and internally displaced persons interested in return, including verification of the voluntary nature of the intended return;

(d) Building of reception capacity in areas of return;

(e) Prioritization of return areas (phased approach);

(f) Design of a schedule for organized returns (logistics, including transport, food, water, temporary shelter etc.);

(g) Physical return in safety and dignity;

(h) Reintegration assistance and monitoring.

21. As long as the conditions for organized returns in safety and dignity are not fulfilled by the parties and mechanisms for property restitution are not established, the design of a timetable for returns must remain an open matter. In the absence of conditions conducive to organized returns and appropriate implementation mechanisms, the United Nations entities will continue to concentrate their efforts on providing the war-affected population, including spontaneous returnees, with humanitarian assistance and support for their reintegration.

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[2] Available from www.ohchr.org/Documents/Publications/pinheiro_principles.pdf.

VI. Conclusion

22. Since the events of August 2008, the United Nations, the European Union and the Organization for Security and Cooperation in Europe have held, as co-chairs, six rounds of discussions in Geneva pursuant to the six-point agreement of 12 August 2008 and the subsequent implementing measures of 8 September 2008. During these discussions, issues relating not only to security and stability, but also to humanitarian issues, including refugees and internally displaced persons, were elaborated upon. To advance the discussions, the Co-Chairpersons made frequent missions to the conflict area and submitted various proposals to the sides. Despite such efforts, a comprehensive settlement of the conflict addressing the needs of all refugees and internally displaced persons regardless of where they are currently displaced has to date proved elusive. Thus, the conditions ultimately required to allow for the organized return of displaced persons have not been met. Provided that, as a minimum, adequate security guarantees are in place for refugees, internally displaced persons and returnees as well as for personnel of the United Nations and the implementing partners, the competent United Nations entities will continue to support the humanitarian needs of this population to the extent possible, until a timetable for the return of all those displaced by the conflict can be drawn up.